UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,056	12/30/2003	Charles Douglas Ball	RPS920030201US1	8331

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EXAMINER
SCHMIDT, KARI L

ART UNIT	PAPER NUMBER
2139	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Advisory Action ***Before the Filing of an Appeal Brief***	*10/748,056*	BALL ET AL.
	Examiner	Art Unit	
	KARI L. SCHMIDT	2139	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>26 August 2008</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ They raise the issue of new matter (see NOTE below);

   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

      NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: _____.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

  /Kristine Kincaid/
  Supervisory Patent Examiner, Art Unit 2139

Continuation of 11. does NOT place the application in condition for allowance because: The applicant argues the 35 USC 112, second paragraph rejection of "... 'so that the non-conforming computing module must transact the secure function through the excluding computing module' ... 'and unable to transact the secure function module through the excluding module' ..." are indefinite The examiner still maintains the 35 USC 112, second paragraph rejection. The examiner still notes that as claimed the limitation makes the claim confusing and indefinite. As stated in the final rejection how can the non-conforming module "must" transact the secure function through the excluding module and then later in the same limitation "not be able to transact the secure function through the excluding module". This is indefinite and contradicts the beginning of the limitation. If it must transact thought the external module it means it always has to based on the condition "must". Therefore the examiner still maintains the 35 USC 112, second paragraph rejection and the interpretation that a secure function module can be configured to transact with both the excluding and non-conforming modules. The applicant further argues the 35 USC 103 rejection of claims 1, 4-1, 14-17, 19-24, and 26-30.

The applicant argues that Ilnicki and Brickell fails to disclose "both an exclusive computing module and a non-conforming computing module, the exclusive computing module configured so that the non-conforming computing module must transact the secure function with the secure function module through the exclusive computing module and the non-conforming computing module unable to transact the secure function with the secure function module using cryptographic keys of the excluding computing module." (argument 1) The examiner notes this limitation of the claim stems off the 35 USC 112, second paragraph rejection and has been interpreted to mean that the secure function can transact with both the excluding and non-conforming modules, therefore as claimed Ilnikci discloses the excluding computing module configured to exclusively transact the secure function with the secure function module so that the non-conforming computing module must transact the secure function through the excluding computing module (see at least, column 2, lines 42-55 and col. 6, line 47-col.7, line 1-41: the examiner notes communication is performed based on the measuring agent and server based on the secret key established between the agent and server and further interprets that the measuring agent is used in order to transaction data between a non-conforming module (e.g. see at least, Figure 4, column 4, lines 21-29: "transferring data between an application server and an agent of the application server through a non-trusted node")). Further Ilnicki discloses the secure computing module (see at least, Figure 1 and Figure 4: the examiner notes the browser) is able to be configured to communicate both with the excluding conforming module (see at least, col. 2, lines 42-55 and Figure 1 : the examiner notes transferring of data through the agent to the browser) and the non-confirming computing module (see at least, Figure 4 and column 4, lines 21-29: transferring data between agent through the browser through the non-trusted node). The examiner notes Ilinkni the non-conforming computing module unable to transact the secure function with the secure function module using cryptographic keys of the excluding module (see at least, column 2, lines 42-55 and col. 6, line 47-col.7, line 1-41: the examiner notes communication is performed based on the measuring agent and server based on the secret key established between the agent and server and further notes that the secret key is only known to the agent and server and no other entity (e.g. non-conforming module) would have access to the secret key). The examiner notes Ilnicki discloses enabling the secure function module (see at least, col. 4, lines 6-10: the examiner notes an browser to be the secure function module) to transact with the secure functions with a non-conforming module (see at least, col. 6, line 47-col. 7, line 31 and Figure 4: the examiner notes the "browser launching the agent" this agent being in a non-secure environment (different from the first agent representing the ECM)) with the use of the public key of the given measuring agent (see at least, column 6, line 47-column, 7, line 41). The examiner would like to note that each key is unique to a given agent therefore it would read on the amendment of 'wherein the non-conforming computing module cannot transact the secure function with the secure function module using the cryptographic keys of the excluding computing module' due to each key being unique for each agent (see at least, column 6, line 47-column 7, line 41). This argument is not persuasive.

Further the applicant argues that that Ilnicki and Brickell fails to disclose "identifying the excluding computing module initiating the secure function and setting the context of the secure function module to the excluding computing module context, nor do Ilnicki and Brickell teach identifying the non-conforming computing module initiating the secure function and setting the context of the secure function module to the non-conforming computing module context". (argument 2 and 3) The examiner disagrees. The examiner notes that Ilnicki discloses a context module configured to identify the excluding computing module initiating the secure function and set the context of the secure function module to the excluding computing module context and to identify the non-conforming computing module initiating the secure function and set the context of the secure function module to the non-conforming computing module context (see at least, column 10, lines 55-64: the examiner notes in a case of a non trusted environment the agent communicates via the non conforming computing module, in a case of a trusted environment communicates via the secure connection all handled by the agent). Therefore the examiner notes in either environment trusted or non- trusted the modules will initiate secure functionality based on the environment they are in. This argument is not persuasive. .